

affect any publicly owned park or any place included in the National Register of Historic Places, the regulatory authority shall transmit to the Federal, State, or local agency with jurisdiction over the park or place a copy of applicable parts of the permit application, together with a request for that agency's approval or disapproval of the operation, and a notice to that agency that it has 30 days from receipt of the request within which to respond and that failure to interpose a timely objection will constitute approval. The regulatory authority, upon request by the appropriate agency, may grant an extension to the 30-day period of an additional 30 days. Failure to interpose an objection within 30 days or the extended period granted shall constitute an approval of the proposed permit.

(2) A permit for the operation shall not be issued unless jointly approved by all affected agencies.

(g) If the regulatory authority determines that the proposed surface coal mining operation is not prohibited under section 522(e) of the Act and this part, it may nevertheless, pursuant to appropriate petitions, designate such lands as unsuitable for all or certain types of surface coal mining operations pursuant to part 762, 764 or 769 of this chapter.

(h) A determination by the regulatory authority that a person holds or does not hold valid existing rights or that surface coal mining operations did or did not exist on the date of enactment shall be subject to administrative and judicial review under §§775.11 and 775.13 of this chapter.

[48 FR 41348, Sept. 14, 1983, as amended at 52 FR 4261, Feb. 10, 1987]

## PART 762—CRITERIA FOR DESIGNATING AREAS AS UNSUITABLE FOR SURFACE COAL MINING OPERATIONS

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AUTHORITY: Pub. L. 95-87, 30 U.S.C. 1201 *et seq.*, and Pub. L. 100-34.

SOURCE: 48 FR 41350, Sept. 14, 1983, unless otherwise noted.

### §762.1 Scope.

This part establishes the minimum criteria to be used in determining whether lands should be designated as unsuitable for all or certain types of surface coal mining operations.

### §762.4 Responsibility.

The regulatory authority or OSM shall use the criteria in this part for the evaluation of each petition for the designation of areas as unsuitable for surface coal mining operations.

### §762.5 Definitions.

For purposes of this part:

*Fragile lands* means areas containing natural, ecologic, scientific, or esthetic resources that could be significantly damaged by surface coal mining operations. Examples of fragile lands include valuable habitats for fish or wildlife, critical habitats for endangered or threatened species of animals or plants, uncommon geologic formations, paleontological sites, National Natural Landmarks, areas where mining may result in flooding, environmental corridors containing a concentration of ecologic and esthetic features, and areas of recreational value due to high environmental quality.

*Historic lands* means areas containing historic, cultural, or scientific resources. Examples of historic lands include archeological sites, properties listed on or eligible for listing on a State or National Register of Historic Places, National Historic Landmarks, properties having religious or cultural significance to Native Americans or religious groups, and properties for which historic designation is pending.

*Natural hazard lands* means geographic areas in which natural conditions exist which pose or, as a result of surface coal mining operations, may pose a threat to the health, safety or

welfare of people, property or the environment, including areas subject to landslides, cave-ins, large or encroaching sand dunes, severe wind or soil erosion, frequent flooding, avalanches and areas of unstable geology.

*Renewable resource lands* means geographic areas which contribute significantly to the long-range productivity of water supply or of food or fiber products, such lands to include aquifers and aquifer recharge areas.

*Substantial legal and financial commitments in a surface coal mining operation* means significant investments that have been made on the basis of a long-term coal contract in power plants, railroads, coal-handling, preparation, extraction or storage facilities, and other capital-intensive activities. Costs of acquiring the coal in place, or the right to mine it alone without other significant investments, as described above, are not sufficient to constitute substantial legal and financial commitments.

[48 FR 41350, Sept. 14, 1983, as amended at 52 FR 18795, May 19, 1987; 53 FR 26584, July 13, 1988]

#### **§ 762.11 Criteria for designating lands as unsuitable.**

(a) Upon petition an area shall be designated as unsuitable for all or certain types of surface coal mining operations, if the regulatory authority determines that reclamation is not technologically and economically feasible under the Act, this chapter or an approved State program.

(b) Upon petition an area may be (but is not required to be) designated as unsuitable for certain types of surface coal mining operations, if the operations will—

(1) Be incompatible with existing State or local land use plans or programs;

(2) Affect fragile or historic lands in which the operations could result in significant damage to important historic, cultural, scientific, or esthetic values or natural systems;

(3) Affect renewable resource lands in which the operations could result in a substantial loss or reduction of long-range productivity of water supply or of food or fiber products; or

(4) Affect natural hazard lands in which the operations could substantially endanger life and property, such lands to include areas subject to frequent flooding and areas of unstable geology.

#### **§ 762.12 Additional criteria.**

(a) A State regulatory authority may establish additional or more stringent criteria for determining whether lands within the State should be designated as unsuitable for coal mining operations. Such criteria shall be approved pursuant to subchapter C of this chapter.

(b) The Secretary may establish additional criteria for determining whether Federal lands should be designated as unsuitable for surface mining operations.

(c) Additional criteria will be determined to be more stringent on the basis of whether they provide for greater protection of the public health, safety and welfare or the environment, such that areas beyond those specified in the criteria of this part would be designated as unsuitable for surface coal mining operations.

#### **§ 762.13 Land exempt from designation as unsuitable for surface coal mining operations.**

The requirements of this part do not apply to—

(a) Lands on which surface coal mining operations were being conducted on the date of enactment of the Act;

(b) Lands covered by a permit issued under the Act; or

(c) Lands where substantial legal and financial commitments in surface coal mining operations were in existence prior to January 4, 1977.

#### **§ 762.14 Exploration on land designated as unsuitable for surface coal mining operations.**

Designation of any area as unsuitable for all or certain types of surface coal mining operations pursuant to section 522 of the Act and regulations of this subchapter does not prohibit coal exploration operations in the area, if conducted in accordance with the Act, this chapter, any approved State or Federal program, and other applicable requirements. Exploration operations on any